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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Kamran Madani and Abolfazl Vaghef,  
plaintiffs,  
vs.  
BHVT Motors, Inc., Automotive  
Investment Group-Arizona, Inc., and VT  
Inc.,  
defendants.

No. CV 04-1897-PHX-RCB

**Plaintiff's Response in Opposition to  
Defendant's Motion in Limine to  
Exclude Evidence of the EEOC's  
Determination**

(Oral Argument Requested)

Bell Honda seeks to exclude from evidence at trial the fact that after the United States Equal Employment Opportunity Commission (the "EEOC") investigated Plaintiffs' Charges of Discrimination against Bell Honda, the EEOC issued two Letters of Determination finding (for example) that:

Charging Party alleges that he was subjected to a racially charged work environment because of his national origin, Iranian, and then further harassed and forced to resign in retaliation for complaining about racial harassment, which was in violation of Title VII.

Respondent Bell Honda denies the allegations. . . .

Respondent Bell Honda specifically states that Charging Party was not harassed while employed, that there is a policy in place prohibiting harassment and a system to handle employee complaints, that Charging Party did not use the system and did not complain about any harassment, and that he resigned without notice to take a job elsewhere.

Charging Party states several managers were those who racially harassed him. He states he complained about the racially charged environment to more than one manager with no effect. After he complained to the General Manager of Respondent Bell

1 Honda, some of the name calling stopped but people continued  
2 to belittle his accent. After a short while longer, Charging Party  
resigned.

3 Sworn Affidavits from five witnesses support Charging Party's  
4 allegation of a racially charged work environment. They  
5 specifically state that several members of Respondents'  
6 management regularly used a constant stream of racially  
derogatory epithets to address and or refer to Blacks, Hispanics,  
7 Asians, and Middle Eastern employees and customers. The  
witnesses state nothing was done to correct the racial  
harassment.

8 The Initial Letter of Determination was rescinded based on an  
9 understanding that Bell Honda had additional highly relevant  
10 evidence that they did not have the opportunity to present. We  
were not successful in this regard and Respondents provided no  
important new evidence, and further, there was a sufficient basis  
to issue the findings of cause.

11 Based on this evidence, I have determined there is reasonable  
12 cause to believe Respondent violated Title VII by harassing  
13 Charging Party and forcing him to resign because of his national  
origin, Iranian, and in retaliation for having complained internally  
about the harassment.

14 See attached Exhibit A, p. 1-2.

15 As demonstrated below, Bell Honda's assertions regarding the admissibility of the  
16 EEOC's Letters of Determination against it flatly contradict the Ninth Circuit's unequivocal,  
17 longstanding rule establishing the per se admissibility of EEOC Letters of Determination  
18 in Title VII cases. Indeed, Bell Honda's Motion in Limine presumptuously asks this Court  
19 to overrule almost three decades of Ninth Circuit precedent.

20 Specifically, the Ninth Circuit has repeatedly recognized that an EEOC Letter of  
21 Determination is a "highly probative evaluation of an individual's discrimination complaint."  
22 Coleman v. Quaker Oats, 232 F.3d 1271, 1283 (9<sup>th</sup> Cir. 2000). As the Ninth Circuit  
23 concluded in Plummer v. Western International Hotels, Co., Inc., 656 F.2d 502, 505 (9<sup>th</sup> Cir.  
24 1981):

25 A civil rights plaintiff has a difficult burden of proof, and should  
26 not be deprived of what may be persuasive evidence. We  
27 therefore hold that the plaintiff has a right to introduce an EEOC  
probable cause determination in a Title VII lawsuit, regardless of  
28 what other claims are asserted, or whether the case is tried  
before a judge or jury. The district court erred in excluding the  
EEOC determination, and we reverse and remand.

1 Notwithstanding Bell Honda's unsubstantiated assertions of "prejudice," as the Ninth Circuit  
 2 has also expressly concluded, "the probative nature of the EEOC probable cause  
 3 determination far outweighs the prejudicial effect it may have on a jury." Heyne v. Caruso,  
 4 69 F.3d 1474, 1483 (9<sup>th</sup> Cir. 1995). See also, Chandler v. Roudebush, 425 U.S. 840, 863  
 5 n. 39 ("Prior administrative findings made with respect to an employment discrimination  
 6 claim may, of course, be admitted as evidence at a federal sector trial de novo. See Fed.  
 7 Rule Evid. 803(8)(C)").<sup>1</sup>

8 Based on these factors, in the Ninth Circuit, district court's are "required" to admit  
 9 Letters of Determination into evidence at trial. See Coleman v. Quaker Oats, 232 F.3d at  
 10 1283 ("as required by our case law, the district court properly admitted the letter [of  
 11 determination] into evidence"). Indeed, the Ninth Circuit has "held that EEOC 'probable  
 12 cause determinations' are per se admissible in a trial de novo on Title VII claims."  
 13 Amantea Cabrera v. Potter, 279 F.3d 746, 749 (9<sup>th</sup> Cir. 2002). See also, Bradshaw v.  
 14 Zoological Society of San Diego, 569 F.2d 1066, 1069 (9<sup>th</sup> Cir. 1978) (an "EEOC  
 15 determination of probable cause is admissible evidence in a trial de novo").

16 Based on these longstanding Ninth Circuit authorities, Bell Honda's Motion in Limine  
 17 Regarding the EEOC's Letter of Determination is meritless.

18 In the face of this weight of Ninth Circuit authority, Bell Honda claims that the  
 19 EEOC's Letters of Determination in favor of the Plaintiffs in this case are flawed because  
 20 the EEOC's investigation of Plaintiffs' complaints of discrimination in the workplace at Bell  
 21 Honda was deficient and biased. However, as the EEOC Letters of Determination  
 22 expressly notes, five former employees of Bell Honda provided the EEOC with sworn  
 23 statements substantiating that Plaintiffs (and other racial minorities) were subjected to an  
 24

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25  
 26 <sup>1</sup> In a recent opinion considering Title VII of the Civil Rights Act, the Supreme  
 27 Court of the United States noted the EEOC issues Letters of Determination finding  
 28 "reasonable cause" of discrimination in only approximately 11% of all charges of  
 discrimination filed with the EEOC. See Equal Employment Opportunity Commission v.  
Waffle House, Inc., 534 U.S. 279, 290 n.7 (2002).

1 egregious pattern of discriminatory abuse in the workplace perpetrated by managers at Bell  
2 Honda that went unremedied notwithstanding complaints. See attached Exhibits B.

3 Moreover, the Letters of Determination also indicate that although the EEOC gave  
4 Bell Honda an additional opportunity to present evidence undermining Plaintiffs' allegations,  
5 Bell Honda failed to take advantage of the opportunity. See attached Exhibit A, p. 2. In  
6 fact, Bell Honda does not identify a single piece of evidence or a single witness that it  
7 offered to the EEOC that the EEOC nonetheless failed to consider. Indeed--even at this  
8 late juncture in this dispute--Bell Honda has failed to produce any testimony refuting  
9 Plaintiffs' complaints.

10 In short, Bell Honda claims of bias are not supported by anyone with personal  
11 knowledge of the work environment at Bell Honda during Plaintiffs' respective tenures of  
12 employment with the dealership. In light of each Plaintiffs' sworn statements to the EEOC,  
13 coupled with corroborating affidavits from five independent witnesses, it should be no  
14 surprise that the EEOC rendered Letters of Determination against Bell Honda.

15 The Ninth Circuit's opinions in Amantea Cabrera, Coleman, Plummer, Bradshaw,  
16 and Caruso are controlling. Bell Honda's Motion in Limine to Exclude the EEOC's  
17 Determination should be denied.

18 Dated the 14<sup>th</sup> day of April, 2006.

19  
20 **MONTOYA JIMENEZ**  
21 A Professional Association

22 s/ Stephen G. Montoya  
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28

1 I hereby certify that on April 14, 2006,  
2 I electronically transmitted the foregoing document  
3 to the Clerk's Office using the CM/ECF System for filing  
4 and transmittal of a Notice of Electronic Filing  
5 to the following CM/ECF registrants:

6 M. Brett Burns  
7 Stephanie K. Osteen  
8 Akin Gump Strauss Hauer & Feld LLP  
9 1700 Pacific Avenue, Suite 4100  
10 Dallas, Texas 75201  
11 Attorneys for Defendants  
12

13 I hereby certify that on April 17, 2006,  
14 I served the foregoing document by hand-delivery to the following:

15 The Honorable Robert C. Broomfield  
16 United States District Court for the District of Arizona  
17 Sandra Day O'Connor United States Courthouse  
18 401 West Washington Street  
19 Phoenix, Arizona 85003  
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21 s/ Stephen G. Montoya  
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